

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q63124

Hiroyuki NISHII, et al.

Appln. No.: 09/809,273

Group Art Unit: 1794

Confirmation No.: 4971

Examiner: Dawn L. Garrett

Filed: March 16, 2001

For: MEMBER FOR ELECTROLUMINESCENT DEVICE AND ELECTROLUMINESCENT DEVICE
HAVING THE SAME

SUBMISSION OF APPEAL BRIEF

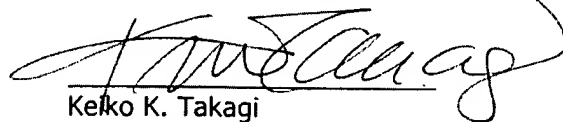
MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The USPTO is directed and authorized to charge the statutory fee of \$540.00 and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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Date: February 19, 2009

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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P.O. Box 1450
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Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is Nitto Denko Corporation.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative and the Assignee of this application are not aware of any other appeals or interferences that will directly affect, or be affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 4, 10, 12, 13, 15 and 17 are pending in the application.

Claims 1-3, 5-9, 11, 14, and 16 have been canceled.

Claims 4, 10, 12, 13, 15 and 17 are rejected.

This is an appeal from the Examiner's rejection of claims 4, 10, 12, 13, 15 and 17 under 35 U.S.C. § 102(b) and 103(a).

IV. STATUS OF AMENDMENTS

The Amendment under 37 C.F.R. § 1.111 submitted on July 29, 2008, is the last response submitted with amendments to the claims of the application. The Amendment filed on July 29, 2008 was entered.

There are no outstanding amendments to the claims or to the specification in the present application.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 4 recites a member for an electroluminescent device (1 of Figs. 1-6) comprising a container which is made of a porous material (11 of Figs. 1-6) and a non-porous material (13 of Figs. 1-2 and 4-6) and a removing agent (12 of Figs. 1-2) capable of removing a prescribed gaseous component, the removing agent being contained in said container, wherein said container is made of two flat sheets joined together only at their peripheries, one of said two flat sheets being a porous sheet, and the other being a non-porous sheet (*see* page 5, lines 18-24 and Figs. 1-2); said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer (*see* page 6, line 20 to page 7, line 2); and said reinforcing layer is nonwoven fabric (*see* page 6, line 23).

Claim 13 depends from claim 4.

Independent claim 10 recites an electroluminescent device (2 of Fig. 6; page 9, lines 1-23) having a member (1 of Figs. 1-6) comprising a container which is made of a porous material (11 of Figs. 1-6) and a non-porous material (13 of Figs. 1-2 and 4-6) and a removing agent (12 of Figs. 1-2) capable of removing a prescribed gaseous component, the removing agent being contained in said container, wherein said container is made of two flat sheets joined together only at their peripheries, one of said two flat sheets being a porous sheet, and the other being a non-porous sheet (*see* page 5, lines 18-24 and Figs. 1-2); said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer (*see* page 6, line 20 to page 7, line 2); and said reinforcing layer is nonwoven fabric (*see* page 6, line 23).

Claims 12 and 17 depend from claim 10.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue on appeal is whether the Examiner improperly finally rejected claims 4 and 13 under 35 U.S.C. §102(b) as allegedly being anticipated by Wakamatsu et al. (US 4,667,814) and claim 15 under 35 U.S.C. §103(a) as allegedly being unpatentable over Wakamatsu.

The issues on appeal is whether the Examiner improperly finally rejected claims 10, 12 and 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over Wakamatsu in view of Biebuyck et al. (US 5,734,225).

VII. ARGUMENT

- 1. The rejection of claims 4 and 13 under 35 U.S.C. §102(b) as allegedly being anticipated by Wakamatsu et al. (US 4,667,814) and the rejection of claim 15 under 35 U.S.C. §103(a) as allegedly being unpatentable over Wakamatsu should be reversed because Wakamatsu does not disclose, teach or suggest all the elements of the claimed invention.**

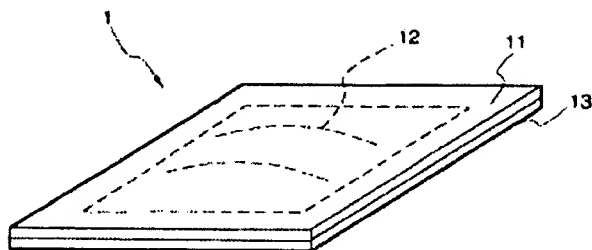
A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. In addition, for anticipation, the *identical invention* must be shown in as complete detail as is contained in the claim. See MPEP §2131.

Appellants respectfully submit that Wakamatsu does not disclose every element of claim

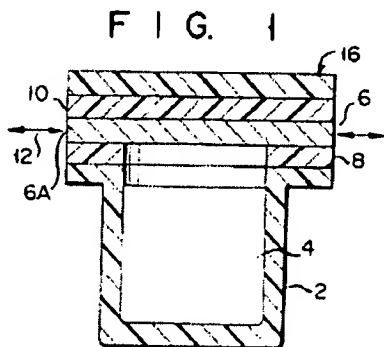
4. Specifically, Wakamatsu fails to disclose a container made of two flat sheets joined together only at their peripheries, as recited in claim 4.

The container made of two flat sheets joined together only at their peripheries, as recited in claim 4, has a structure that is different from the structure of Wakamatsu. In this regard, the present specification discloses, for example, that the container is formed by interposing the removing agent 12 between the porous sheet 11 and the non-porous sheet 13 as shown in Figs. 1 and 2, and the peripheries of the two sheets 11 and 13 are sealed by, for example, application of an adhesive or a pressure-sensitive adhesive, heat-sealing, mechanical intermeshing, and the like. See page 8 of the specification. Fig. 2 is reproduced below for the Board's convenience.

FIG. 2



The Examiner asserts that the container 2 of Wakamatsu is a "[s]heet (2) is considered to be a "flat" sheet that is shaped." For the Board's convenience, Fig. 1 of Wakamatsu is reproduced below.



Wakamatsu discloses reference 2 as being a blister **molded** cup-like plastic container. See col. 2, line 30 (emphasis added). The, molded container 2 of Wakamatsu is clearly not a flat sheet and thus, the container 2 of Wakamatsu is different from the non-porous flat sheet of claim 4.

In addition, Wakamatsu does not disclose, teach or even suggest that container 2 is a container formed by shaping a flat sheet into a container 2. The Examiner simply conjectures

that Wakamatsu takes a flat sheet and molds it into container 2. There is simply no disclosure in Wakamatsu in this regard.

Since Wakamatsu does not disclose a non-porous flat sheet, Wakamatsu fails to disclose a container made of two flat sheets joined together only at their peripheries, as recited in claim 4.

In addition, the Examiner asserts that the "sheet 2" is the same type of sheet formation depicted in instant Figures 1 and 6. The Examiner further asserts that the claims do not exclude a member from comprising a shaped sheet and asserts that Figs. 1 and 2 show a sheet from which the member is made is cornered or formed into a concave shape.

The Examiner misapprehends the figures. First, Fig. 1 is not a molded or shaped container as can be seen when viewing Fig. 2, which is a perspective view of Fig. 1. Figs. 1 and 2 merely show the presence of the removing agent. More specifically, Fig. 2 shows the presence of the removing agent between two flat sheets - the dotted lines outlining the presence of the removing agent. Fig. 6 merely depicts the presence of the member in the EL device, and thus is shown as a rectangle.

Furthermore, the Examiner's interpretation of Figs. 1 as having "corners" or forming a concave shape is incorrect, and the Examiner appears to be improperly interpreting the claims in view of the Figures and by ignoring the specification.

The specification discloses that the container is made of two flat sheets, which is different from the container of Wakamatsu. For example, the specification discloses methods of making the porous sheet, for example, (1) a dry process comprising extruding a molten resin into *film* and stretching the extruded *film* at low temperature and then at high temperature to made the

film porous, (2) a wet process comprising extruding a molten resin mixed with an extractable into *film*, stretching the extruded *film*, and removing the extractable by solvent extraction, etc. to leave pores, and (3) a process comprising fusing resin particles under pressure to form a porous block, which is sliced into *film*. See page 6 of the specification.

For at least the above reasons, the molded cup-like container 2 of Wakamatsu is different from the non-porous sheet of claim 4, and thus the container made of two flat sheets joined together only at their peripheries, as recited in claim 4, is not disclosed, taught or suggested by Wakamatsu.

Thus, Wakamatsu fails to disclose, teach or suggest every element of claim 1. Claims 13 and 15 depend from claim 1.

Accordingly, Appellants respectfully submit that the anticipation rejection and obviousness rejection based on Wakamatsu should be reversed.

2. The rejection of claims 10, 12 and 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over Wakamatsu in view of Biebuyck et al (US 5,734,225) should be reversed because the combination does not teach or suggest all the elements of the claimed invention.

The Examiner relies on Biebuyck as teaching the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device and further describes it is desirable to have a protective film directly adjacent to the EL device. See col. 1, lines 7-37; col. 2, lines 43-44 and lines 53-61.

Claim 10 also recites a container made of two flat sheets joined together only at their peripheries, which is not disclosed, taught or suggested by Wakamatsu for the reasons discussed above.

Biebuyck also does not disclose a container made of two flat sheets joined together only at their peripheries, as recited in claim 10. Thus, even if the references were somehow combined, Biebuyck does not make up for the deficiencies of Wakamatsu.

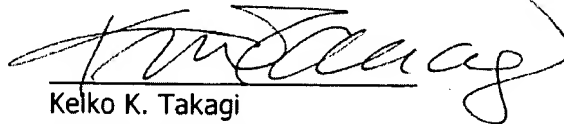
For at least the above reasons, it is respectfully submitted that the combination of Wakamatsu and Biebuyck fails to teach or suggest every element of claim 10. Claims 12 and 17 depend from claim 10.

Accordingly, Appellants respectfully submit that the obviousness rejection based on Wakamatsu and Biebuyck should be reversed.

Conclusion

The USPTO is directed and authorized to charge the statutory fee (37 C.F.R. §41.37(a) and 1.17(c)) and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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CLAIMS APPENDIX

CLAIMS 4, 10, 12, 15, and 17 ON APPEAL:

4. A member for an electroluminescent device comprising a container which is made of a porous material and a non-porous material and a removing agent capable of removing a prescribed gaseous component, the removing agent being contained in said container,

wherein said container is made of two flat sheets joined together only at their peripheries, one of said two flat sheets being a porous sheet, and the other being a non-porous sheet;

said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer; and

said reinforcing layer is nonwoven fabric.

10. An electroluminescent device having a member comprising a container which is made of a porous material and a non-porous material and a removing agent capable of removing a prescribed gaseous component, the removing agent being contained in said container,

wherein said container is made of two flat sheets joined together only at their peripheries, one of said two flat sheets being a porous sheet, and the other being a non-porous sheet;

said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer; and

said reinforcing layer is nonwoven fabric.

12. The electroluminescent device according to claim 10, wherein said removing agent is capable of removing at least one of moisture, oxygen and organic vapors.

13. The member according to claim 4, wherein said removing agent is capable of removing at least one of moisture, oxygen and organic vapors.

15. The member according to claim 4, wherein said porous sheet has an average pore size of 0.05 to 50 μm .

17. The electroluminescent device according to claim 10, wherein said porous sheet has an average pore size of 0.05 to 50 μm .

EVIDENCE APPENDIX:

Pursuant to 37 C.F.R. § 41.37(c)(1)(ix), submitted herewith are copies of any evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

These documents have not been submitted.

Appeal Brief Under 37 C.F.R. § 413.37
U.S. Application No.: 09/809,273

Attorney Docket No.: Q63124

RELATED PROCEEDINGS APPENDIX

Submitted herewith are copies of decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

None.